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HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.Appeal No.869/2001

APPELLANT	Sushant Banerjee s/o Madan Banerjee, Aged 40 years, R/o Chayipar, Thana-Daspur Ghatal, District-Medinipur (West Bengal) Present R/o Soniya Gandhi Nagar, near M.P.E.B. office, Kotara Road, Raigarh, Thana & District-Raigarh(CG)
	Versus
RESPONDENT	State of Madhya Pradesh (Now Chhattisgarh] Through:- City Kotwali, Raigarh(CG)

Appearance:

Shri M.K.Bhaduri, counsel for the appellant.

Shri D.K.Gwalre, Additional Public Prosecutor for the State.

ORAL JUDGEMENT
(15.05.2007)

SUNIL KUMAR SINHA, J.

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 9.8.2001, passed in S.T.No.162/2000 by the 3rd, Additional Sessions Judge, Raigarh, whereby, the said Court, after holding the appellant guilty of the offence punishable under Sections 376 and 506 part II IPC, sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for 2 months, and R.I. for 6 months respectively with a further direction to run the sentences concurrently.

The brief facts are that the prosecutrix –PW-2, a girl aged about 14 years is the daughter of the appellant. She was residing with the appellant, her mother and 2 brothers. Her mother is of unsound mind. She lodged a report dated 23.5.2000(Ex.P/3) that since 1 ½ years prior to the said date,

she was being subjected to frequent sexual intercourses by her father, due to which, her menstruation has stopped. She also made allegations that her father used to beat her and he also used to threaten her for not disclosing this fact to anybody else. However, when her menstruation stopped, she has told the matter to other persons of the locality, whom she could identify. On this report, lodged by the prosecutrix, investigation commenced and the evidence of age of the prosecutrix was collected. Her School certificates were seized under Ex.P/6 and her clothes were also seized under Ex.P/7. Thereafter, she was sent for medical examination. Dr. (Ms.) S. Tripathi (PW-4) examined her on 23.5.2000 and gave a report vide Ex.P/10. In the internal examination, she could notice that there was an old tear in the hymen and the vagina was hardly admitting one finger. For determination of age, she has advised for Radiological examination. After this, the prosecutrix was again examined by Dr.(Ms.)S.Ekka (PW-6), who also found almost similar features in her examination and noticed that the hymen was old ruptured. She also advised for Radiological examination for determination of the age of the prosecutrix. However, she stated that no definite opinion can be given regarding rape. She prepared report Ex.P/12. Thereafter, the prosecutrix was referred to the Radiologist and her radiological examination was conducted by Dr.M.D.Joshi(PW-3), who submitted his report vide Ex.P/8, which was based upon the x-ray plate Ex.P/9. According to the Ossification Test report dated 26.5.2000, the prosecutrix was found to be in between 14 to 15 years of age. After completion of the usual investigation, charge sheet was filed.

The learned Sessions Judge, vide para 8 of the judgment, recorded a finding that the prosecutrix was below 16 years of age on the date of incident and thereafter, believing on the testimony of the prosecutrix (PW-2), he further determined that she was subjected to frequent sexual intercourses by her father

and on the basis of this finding, the appellant was convicted under the aforesaid Sections of IPC and sentenced as above.

Learned counsel for the appellant argues that the prosecutrix is not a reliable witness and the conviction based upon the sole testimony of the prosecutrix cannot be sustained. He also disputes regarding the age of the prosecutrix.

On the other hand, learned counsel for the State opposes this argument. He supports the judgment of conviction and order of sentence passed by the Sessions Court.

I have heard learned counsel for the parties at length and have also perused the records of the Sessions trial.

So far as the age of the prosecutrix is concerned, the prosecution has produced the copy of the admission register of School, which has been placed on record as Ex.P/1-C. According to the entry of this register, date of birth of the prosecutrix is 19.7.1985. Another document is the certificate/mark sheet of *Prathamik Praman Patra Pariksha* 1996-97, which has been proved as Ex.P/2. In this document also, date of birth of the prosecutrix has been mentioned as 19.7.1985. Besides the above, there is a report of Ossification Test conducted by Dr. M.D.Joshi(PW-3), who had submitted his report vide Ex.P/8, according to which, the prosecutrix was found to be in between 14-15 years of age on the date of examination i.e. on 26.5.2000. If we go through the medical reports of the prosecutrix, prepared by 2 lady Doctors, i.e. Dr.(Ms.) S. Tripathi(PW-4) and Dr.(Ms.) S.Ekka (PW-6), it would appear that the menstruation period of the prosecutrix has begun just 3-4 months prior to the date of her examination and it has come for only once. Her both the jaws were having 14-14 teeth and the place of 3rd molar teeth was blank. Her auxiliary and pubic hairs were not present and the breasts were in developing condition. According to this evidence, undoubtedly, the prosecutrix was below 16 years of age on the date of incident and there appears to be no illegality in the finding recorded by the trial Court, so far as the age of the

prosecutrix is concerned. About the conviction, based upon the testimony of the prosecutrix, the law is well settled. If the testimony of the prosecutrix inspires confidence of the Court then her sole testimony would be sufficient to base the conviction as the quality of the evidence is always given weightage rather than the quantity thereof.

"Neither the Legislature nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent Court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eye-witness, therefore, has no force and must be negatived," it was said by the Apex Court in reference to the solitary eye-witness in the matter of ***Namdeo Vs. State of Maharashtra, 2007 AIR SCW 1835.***

If we examine the evidence of the prosecutrix in light of the above evidence, it would appear that she had deposed before the Court that everything was alright when her mother was well, but as soon as her mother faced mental disorder, the father started doing bad things with her and when she used to resist, her father used to gag her mouth and when she used to disclose such behaviour to the neighbourers, her father used to beat her. In para 3 of her examination-in-chief, she had clearly stated that her father used to put off her *salvar* and under-wear and after getting her naked, he used to undressed himself and thereafter, he used to commit sexual intercourse against her. When her menstruation period was stopped, she had reported the matter to a Nurse of the hospital, who told her that she has conceived pregnancy. She had further deposed vide para 4 that when she

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had gone to report the matter to Police Station, firstly the Police persons did not pay any heed to her, saying that she is a mad. However, when she went along with the Ward Member namely-Ravindra Bhatia, then only her report was lodged vide Ex.P/3.

If we look into the contents of report Ex.P/3, it would appear that she had made allegations that she was being subjected to frequent sexual intercourses by her father since last 1 ½ years.

Learned counsel for the appellant argues that her testimony is unreliable as she has not exactly deposed what she has stated while writing the FIR and while taking her statement under Section 161 Cr.P.C.

This contention raised by learned counsel for the appellant cannot be sustained.

In the opinion of this Court, there is no material omission in the FIR i.e. which shows that the same is specific, in which, it has been mentioned that the appellant used to commit sexual intercourse against the prosecutrix sometimes in the day and sometimes in the night. Almost similar statement was given by her before the Police i.e. Ex.D/1 and there is no omission, so far as the allegations regarding commission of sexual intercourses by the father is concerned.

There are no vital omissions in these 2 previous statements of the prosecutrix, on the basis of which, her testimony can be disbelieved. The contention raised by learned counsel for the appellant has no force and the same cannot be accepted.

At this stage, learned counsel for he appellant raises the point that the sentence awarded to the appellant is too harsh.

The argument raised by learned counsel for the appellant is not only unfounded, but is uncalled for. This is a case, in which, after being the mother mentally retarded, the father had taken undue advantage and had developed sexual relations with her own minor daughter, who was subjected to frequent sexual

intercourses by him. In such situation, when the mother was mentally retarded, the father would have played the role of mother and father both and he should have given proper guardianship to the daughter, whereas, instead of doing so, he had misused the situation and had sexually exploited his own daughter. In this view of the matter, no leniency is called for in the case and the argument raised by learned counsel for the appellant cannot be accepted.

In the result, the appeal is dismissed and the conviction and sentences awarded by the Sessions Court are hereby confirmed.

Sd/-
SUNIL KUMAR SINHA
Judge

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